



PUBLIC NOTICE

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Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Acceptability for Filing Public Notice: Application filed by Hawaiki Submarine Cable USA LLC (HSC USA), Tillamook Lightwave IGA (Tillamook Lightwave), ACS Cable Systems, LLC (ACS), DRFortress, LLC (DRFortress), and the American Samoa Telecommunications Authority (ASTCA) (collectively, the Applicants) for a license to land and operate a non-common carrier fiber-optic submarine cable between the United States, Australia, and New Zealand, to be called the Hawaiki Cable System (Hawaiki). The Application was placed on Public Notice on October 6, 2016. File No. SCL-LIC-20160906-00019, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00188S (IB, rel. Oct. 6, 2016). No comments or oppositions were filed in response to the Public Notice. On October 20, 2016, HSC USA filed an update to the application to reflect a new address for HSC USA. On July 28, 2017, Applicants were granted Special Temporary Authority (STA) to begin constructing and testing the Hawaiki Cable System. SCL-STA-20170721-00018.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR §1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Landing License Cable Landing License Requests, State Department Media Note (Revised) (rel. December 20, 2001) available at <http://www.state.gov/t/pa/prs/ps/2001/6951/htm>. The Department of Homeland Security (DHS) filed a letter to defer action on October 6, 2016. The Department of Justice (DOJ) also filed a letter to defer action on October 17, 2016. DHS, with the concurrence of DOJ and the Department of Defense (DOD; collectively, the "Agencies"), filed a Petition to Adopt Conditions to Authorizations and Licenses on December 19, 2017. The Agencies have no objection to the Commission approving authority to construct, land and operate the Hawaiki Cable System, provided that the Commission conditions its approval on the commitment of Hawaiki Submarine Cable USA LLC to abide by the undertakings set forth in the December 15, 2017, "Letter of Assurances" from Hawaiki Submarine Cable USA LLC to DHS and DOD.

Actions Taken: (1) Grant of Cable Landing License to Hawaiki Submarine Cable USA LLC, et al., for the purpose of landing and operating a non-common carrier fiber-optic submarine cable system, connecting Sydney, Australia; Mangawhai Heads, New Zealand; Tafuna, American Samoa; Kapolei, Oahu, Hawaii; and Pacific City, Oregon, and (2) grant of the Petition to Adopt Conditions to Authorizations and Licenses files on December 19, 2017, by the Department of Homeland Security, with the concurrence of the Department of Justice and Department of Defense.

Licensee Information: The Applicants for the cable landing license for the Hawaiki cable system are the following: (1) Hawaiki Submarine Cable USA LLC (HSC USA), (2) Tillamook Lightwave IGA (Tillamook Lightwave), (3) ACS Cable Systems, LLC (ACS), (4) DRFortress, LLC (DRFortress), and (5) the American Samoa Telecommunications Authority.

HSC USA is a Delaware limited liability company, which is a direct wholly-owned subsidiary of Hawaiki Submarine Cable Limited Partnership (HSC LP), a limited partnership organized under the laws of New Zealand. HSC LP is managed by Hawaiki Submarine Cable LP General Partner, a New Zealand company. HCL LP is a direct wholly-owned subsidiary of HCL LP, a limited partnership organized under the laws of New Zealand. HCL LP is managed by HCL LP General Partner, a New Zealand company. MD Fibre Trust holds a 44.58% interest in HCL LP. HCL Founders LP owns 39.82% of HCL LP. The Galasso Family Trust has a 39.82% indirect ownership through its 100 percent ownership in HCL Founders Trust. Sinclair Hawaiki LP holds a 15.6% interest in HCL LP. The Edgar Family Trusts, Sinclair Investments LP and SIL Hawaiki Ltd hold an indirect 15.6% interest in HSC USA through Sinclair Hawaiki LP. No other person or entity has a 10 percent or greater direct or indirect interest in HSC USA or HSC LP.

Tillamook Lightwave, an Oregon Revised Statutes Chapter 190 Intergovernmental Agency, is owned by: (1) Tillamook County, 33.33%; (2) Port of Tillamook Bay, an Oregon special district formed under ORS Chapter 777, 33.33%; and, (3) Tillamook People's Utility District, an Oregon public utility district formed under ORS Chapter 261, owns 33.33% of Tillamook Lightwave. No other person or entity has a 10 percent or greater direct or indirect interest in Tillamook Lightwave.

ACS, a Delaware limited liability company, is wholly-owned by Alaska Communications Systems Holdings, Inc., which in turn is wholly-owned by Alaska Communications Systems Group, Inc., a Delaware corporation. Alaska Communications Systems Group, Inc. is a publicly traded, widely held corporation in which no individual or entity holds a ten percent or greater interest.

DRFortress, a Delaware corporation, has the following 10 percent or greater direct or indirect interest holders: (1) Rosa White, a U.S. citizen, directly owns 12.19%; (2) Alfred Rodi, a U.S. citizen, directly owns 12.10%; (3) Nathan Osada, a U.S. citizen, directly owns 10.60%; (4) Jefferson Brown, a U.S. citizen, directly owns 12.10%; (5) Vinh Do, a U.S. citizen, directly owns 12.10%; (6) and Brent Oxley, a U.S. citizen, directly owns 15% of DRFortress. No other person or entity has a 10 percent or greater direct or indirect interest in DRFortress.

ASTA is wholly-owned by the American Samoa Government.

Cable Design and Capacity: The Hawaiki cable system will have five segments and land in five locations. Segment 1 will connect Sydney, Australia, and Mangawhai Heads, New Zealand, and will have one fiber pair with a total capacity of 12 terabits per second (Tbps). Segment 2 will connect Mangawhai Heads with Kapolei, Oahu, Hawaii, and will have one fiber pair with a total capacity of 10 Tbps. Segment 3 will connect Sydney and Kapolei, and will have two fiber pairs with a capacity of 20 Tbps. Segment 4 will connect Kapolei with Pacific City, Oregon, and have 3 fiber pairs with a total capacity of 30 Tbps. Segment 5 will connect a branching unit (BU) on the New Zealand to Hawaii fiber pair to Tafuna, American Samoa, and will have 2 fiber pairs with a total capacity of 100-200 gigabits per second (Gbps). The primary Network Operations Center (NOC) for Hawaiki will be located in New Zealand. The backup NOC will be subcontracted in the United States to a U.S. operator.

Hawaiki's design provides the ability to install branching units and spurs to connect a number of Pacific Islands to the main trunk. The Pacific Islands will be connected via Optical Add Drop Multiplexer (OADM) branching units located on the New Zealand to Hawaii fiber pair. With the OADM technology, express wavelengths on all fiber pairs (Australia and New Zealand to the United States) will have no dependence on the Pacific Islands. Given the requirements of the islands, the applicant intends to divert one or two wavelengths for an island (100 Gbps or 200 Gbps) with full upgrade capacity.

Ownership of the Cable System and Landing Points: The main trunk of Hawaiki, between Australia and Oregon, will be 100% owned and constructed by HSC LP, the direct parent of HSC USA. HSC LP and its affiliates will also own and/or control the cable landing stations in Australia, New Zealand, Hawaii and Oregon. The landing station in Sydney will be leased from Equinix. HSC LP will build and own a new landing station in Mangawhai Heads. HSC USA will build and own a new landing station in Kapolei. DRFortress will manage the landing station in Hawaii under contract with HSC USA and will act as the landing party. HSC LP has entered into a contractual agreement with Tillamook Lightwave to lease space in its existing landing station in Pacific City. ACS is under contract with HSC USA provide operation and maintenance services for the Pacific City landing station. All of the capacity on the main trunk will be owned by HSC LP and its affiliates. HSC LP will have control of the NOCs. DRFortress, Tillamook Lightwave and ACS will not own any capacity on Hawaiki.

ASTCA will own, construct and operate the spur connecting American Samoa to a branching unit on the Hawaiki submarine cable system. ASCTA will also will own, construct and operate the cable landing station in Tafuna.

Regulatory Status of the Cable: Applicants state that Hawaiki will increase competition on U.S.-Australia-New Zealand routes and enhance the service quality, redundancy, and resilience of communications systems in the region. Upon deployment, the applicants state that Hawaiki will immediately and significantly increase regional and transpacific capacity, providing an alternative and diverse transmission route from the mainland U.S. to Australia, New Zealand, Hawaii, and American Samoa.

The Applicants propose to operate Hawaiki on a non-common carrier basis. Applicants state there are a variety of competitive alternatives including the PIPE Pacific Cable 1, Southern Cross and Telstra Endeavour cable systems, as well as the South-East Asia-United States system currently under construction. Applicants also state that capacity on Hawaiki will either be used by the Applicants to meet their own internal needs for bandwidth or made available to third parties on individually tailored agreements.

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-22203, paras. 69-70; *Review of Commission Consideration or Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67 (2000).

Conditions and Requirements: Applicants shall comply with the routine conditions set forth in 1.767(g)(1)-(14) of the Commission rules, 47 C.F.R. § 1.767(g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on December 19, 2017 by the Department of Homeland Security with the concurrence of the Department of Justice and Department of Defense. Accordingly, we condition grant of this application on Hawaiki Submarine Cable USA LLC abiding by the commitments and undertakings contained in December 15, 2017 letter from Christophe Terral, Manager, Hawaiki Submarine Cable USA LLC to Assistant Secretary for Policy, DHS, the Department of Defense Chief Information Officer, and the General Counsel, Defense Information Systems Agency (LOA). A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission. A copy of the Petition and the LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160906-00019 and accessing "Other filings related to this application" from the Document Viewing area.
